FAIR

(Federal Activities Inventory Reform)

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FAIR Act

- Federal Activities Inventory Reform Act of 1998 (FAIR Act)
- Codified at 31 United States Code, Section 501
- Requires annual submission of lists of government activities not inherently governmental in nature: the “FAIR Inventory”
- Sets forth procedures for challenges to the list
- Defines the term “inherently governmental”

Inherently Governmental

- Inherently governmental function: a function that is so intimately related to the public interest as to require performance by Federal Government employees

- Term includes activities that require either the exercise of discretion in applying Federal Government authority or the making of value judgments relating to monetary transactions and entitlements

Inherently Governmental (cont.)

- Inherently governmental functions involve, among other things, the **interpretation and execution** of the laws of the United States so as:
  - To bind the United States to take or not to take some action by contract, policy, regulation, authorization, order or otherwise;
  - To determine , protect and advance United States economic, political, territorial, property or other interest by military or diplomatic action, civil or criminal judicial proceedings, contract management or otherwise;
  - To significantly affect the life , liberty or property of private persons;
  - To commission, appoint, direct, or control officers or employees of the United States; or
  - To exert ultimate control over the acquisition, use or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control or disbursement of appropriated and other Federal funds.

Inherently Governmental (cont'd)

- Functions excluded: Term inherently governmental does not normally include:
  - Gathering information for or providing advice, opinions, recommendations or ideas to Federal Government officials; or
  - Any function that is primarily ministerial in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, vehicle fleet operations, or other routine electrical or mechanical services.

Inherently Governmental (cont'd)

- Some examples of inherently governmental functions:
  - Law enforcement
  - Criminal investigation and prosecution
  - Certifying and disbursing funds
  - Binding the United States via contract (contracting officers)

FAIR Inventory

- FAIR Act requires the head of each executive agency to submit a list annually to OMB of activities performed by Federal Government sources that, in the judgment of the head of the executive agency, are not inherently governmental functions

- FAIR Inventory is a subset of the Inherently Governmental and Commercial Activities Inventory (IG/CA)

FAIR Inventory

- Entry for each activity on the list shall include:
  - Fiscal Year for which the activity first appeared on the list.
  - Number of Full Time Employees (FTEs) or its equivalent that are necessary for the performance of the activity by a Federal Government source.
  - Name of the Federal Governmental employee responsible for the activity from whom additional information can be obtained.

FAIR Inventory (cont.)

- FAIR Inventory does not include:
  - Activities already being performed by contractors
  - Depot level maintenance and repair FTEs as defined by 10 United States Code, section 2460
  - Military manpower authorizations or individuals account
  - Foreign national hires
  - DoD Inspector General positions
  - Some intelligence positions
  - Military (but Military Technicians currently reported)

Challenges to the FAIR Inventory

- An “interested party” may submit a challenge to an executive agency of an omission of a particular activity from, or inclusion of a particular activity on, a list for which OMB has published a notice of public availability

- Interested parties may also challenge a specific OMB Reason Code designation

Challenges to the FAIR Inventory (cont.)

- "Interested Party" Defined
  - Four main categories: contractors, government employees, unions, business and professional associations:

    1) Private source that is an actual or prospective offeror for a contract to perform the activity and has a direct economic interest in performing that activity that would be adversely affected by a decision not to procure from a private sector source

    2) A representative of any business or professional association that has members who are actual or prospective offerors

Challenges to the FAIR Inventory (cont.)

3) Officers or employees of an organization within an executive agency that is an actual or prospective offeror to perform the activity.

4) The head of a labor organization that has members who are officers or employees of executive agencies who are actual or prospective offerors to perform the activity

Note: Military are not interested parties.

Challenges to the FAIR Inventory (cont.)

- Time for submission of Challenges
  - Challenges must be submitted to the executive agency concerned within 30 days after OMB publishes a notice of availability.
  - Executive Agency decides challenges within 28 days of receipt.

  For Army “activities,” challenges are submitted to and decided by the Assistant Secretary of the Army for Manpower and Reserve Affairs.

Appeals of Challenge Decisions

- Interested parties may appeal adverse decisions to the head of the executive agency within 10 days after receiving notice of the challenge decision

- Head of the executive agency must decide the appeal within 10 days of receipt

DoD FAIRNET

- DoD's FAIR Inventory Submission is publicly available on line at : http://web.lmi.org/fairnet
  - FAQs and information about inquiries and challenges
  - Inherently Governmental (IG) Activities Inventory required by OMB Circular a-76 is also on this site.
  - The two inventories may be searched separately.

Army FAIR Website

- http://www.asamra.army.pentagon.mil
- Army FAIR Act adjudications of challenges and appeals are posted.
- Exemption Decisions as of March 2003 are posted.
- DoD Manpower Mix Criteria Code Crosswalk shows how Manpower Mix Codes roughly equate to OMB FAIR reason codes.
- DoD Manpower Mix Criteria Code Definitions

Exemptions

- The ASA (M&RA) may decide to exempt non-inherently governmental functions from outsourcing for policy reasons pursuant to General Order Number 3

- Basis for exemptions are in Dod Manpower Mix Criteria issued by USD (P&R) and 10 U.S.C. §2462 which requires procurement of commercial activities from private sector source based on cost except for functions which SecDef determines must be performed by military or Government personnel

IGCA Inventory

- FAIR Inventory extracted from Inventory of Commercial and Inherently Governmental Activities (IGCA)
- IGCA includes Active and Reserve Component military and civilian employees
- IGCA developed based on DoD Manpower Mix Criteria Codes (MMC) and Commercial Activities Function Codes (CAF)
- There is separate Civil Works and Army IGCA
- IGCA is extracted from TAADS
  - IGCA reported 15 April to OSD
  - FY08 TAADS data
  - FY05 IGCA and FAIR Inventory
  - OSD reports FAIR to OMB in Aug with explanations of changes from FY04 FAIR to FY05 FAIR
  - Challenges and appeals on “FY05” FAIR will likely occur in Jan-Mar 07 and challenges on “FY04” FAIR will likely occur shortly
  - Challenges and appeals may include application of OMB reason codes

DoD Manpower Mix Criteria Code

ORDER OF PRECEDENCE FOR CODING MANPOWER MIX CRITERIA			
A	Military Operations		
B	Exemption for Military Support Elements in Operating Forces	C	Exemption for Civilian Support Elements in Operating Forces
D	Exemption for Military & Civilian Wartime Designations (Dual Status)		
E	Civilian Authority Direction & Control	F	Military-Unique Knowledge & Skills
G	Exemption for Esprit de Corps and Military Support		
H	Exemption for Continuity of Infrastructure Operations	I	Military Augmentation of the Infrastructure During War
J	Exemption for Civilian & Military Rotation	K	Exemption for Civilian & Military Career Progression
L	Exempted by Law, Executive Order, Treaty or International Agreement		
M	Exempted by DoD Management Decision		
P	Pending Restructuring of Commercial Activities		
R	Subject to Review for Competition Under A-76		
W	Non-Packageable Commercial Activity		
X	Alternatives to A-76		

Crosswalk
DoD Manpower Mix Criteria Code to OMB Reason Code

DoD Criteria Code	Manpower Mix Criteria	Group	FAIR (OMB Reason Code)
A	Military Operations	IG	N/A
B	Exemption for Military Support Elements in Operating Forces	Exempt	N/A
C	Exemption for Civilian Support Elements in Operating Forces	Exempt	A
D	Exemption for Military & Civilian Wartime Designations (Dual Status)	Exempt	A
E	Civilian Authority, Direction, & Control of the DoD	IG	N/A
F	Military-Unique Knowledge & Skills	IG	N/A
G	Exemption for Esprit de Corps & Military Support	Exempt	A
H	Exemption for Continuity of Infrastructure Operations-Civilian	Exempt	A
I	Military Augmentation of the Infrastructure During War	IG	N/A
J	Exemption for Civilian & Military Rotation	Exempt	A
K	Exemption for Civilian & Military Career Progression	Exempt	A
L	Exempted by Law, Executive Order, Treaty, or International Agreement	Exempt	F
M	Exempted by DoD Management Decision	Exempt	A
P	Pending Restructuring of Commercial Activities	CA	E
R	Subject to Review for Competition Under OMB Circular A-76	CA	B
W	Nonpackageable Commercial Activity	CA	B
X	Alternatives to OMB Circular A-76	CA	E

DoD Manpower Mix Criteria Codes (MMC) and Function Codes (CAF) in WEBTAADS